79-1300

Supreme Court, U. S.
FILED
FEB 14 1980
MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term 1979

NO.

Circuit Court No. 79-7657

NORMAN F. DACEY,
Petitioner, Appellant,
Plaintiff, Pro Se

v.

HENRY J. NARUK
Defendant

Circuit Court No. 79-7857

NORMAN F. DACEY
Petitioner, Appellant,
Plaintiff, Pro Se

v.

JOHN P. COTTER, et als
Defendants

MOTION FOR LEAVE TO FILE A PETITION FOR THE ISSUANCE OF A WRIT OF MANDAMUS

To the Honorable Thurgood Marshall,
Associate Justice of the Supreme Court
of the United States.

Norman F. Dacey
89 Grovers Avenue
Bridgeport, CT 06605
Petitioner, Appellant
Plaintiff, Pro Se

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To the Honorable Thurgood Marshall,
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Norman F. Dacey
89 Grovers Avenue
Bridgeport, CT 06605
Petitioner, Appellant
Plaintiff, Pro Se

February 13, 1980

MOTION FOR LEAVE TO FILE A PETITION FOR THE ISSUANCE OF A WRIT OF MANDAMUS

1. Petitioner respectfully moves for permission to file a Petition for the issuance of a Writ of Mandamus against the United States Court of Appeals for the Second Circuit.

Norman F. Dacey
89 Grovers Avenue
Bridgeport, CT 06605
Petitioner, Appellant
Plaintiff, Pro Se

IN THE
SUPREME COURT OF THE UNITED STATES

October Term 1979

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NORMAN F. DACEY,
Petitioner, Appellant,
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Circuit Court No. 79-7857

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JOHN P. COTTER, et als
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PETITION FOR THE ISSUANCE OF A WRIT OF MANDAMUS

To the Honorable Thurgood Marshall,
Associate Justice of the Supreme Court
of the United States.

Norman F. Dacey
89 Grovers Avenue
Bridgeport, CT 06605
Petitioner, Appellant
Plaintiff, Pro Se

1. Petitioner Norman F. Dacey, appearing pro se, respectfully petitions for a Writ of Mandamus requiring the United States Court of Appeals for the Second Circuit to grant him adequate and appropriate time in which to argue his appeal of the two actions cited above.

2. Both actions involve important constitutional issues. The Second Circuit has allotted to and one-half (2-1/2) minutes for argument of each, this being scarcely time for the Petitioner to introduce himself and state the case. The imposition of such a limitation is patently a denial of due process.

3. The actions have been set down for a hearing at 10:30 a.m. on Friday, February 29, 1980. Petitioner respectfully requests mandamus relief from the limitations imposed by the Second Circuit Court of Appeals.

Norman F. Dacey
89 Grovers Avenue
Bridgeport, CT 06605

* *

STATEMENT RE: DACEY V. NARUK

In 1966, Petitioner Dacey wrote the best-selling book, HOW TO AVOID PROBATE. In 1967, the Connecticut Bar Association distributed nationwide a pamphlet which seriously libeled Dacey and he filed an action for damages. On

June 13, 1974, a jury in the Superior Court of Connecticut at Bridgeport found the Association guilty of malicious libel and awarded Dacey $60,000 damages plus counsel fees.

The Association appealed the verdict to five of its own members acting under color of law as the bench of the Supreme Court of Connecticut. The five justices, each of whom had been ordered to contribute to the damages and costs awarded Dacey, sat in "judgment" on the Bar Association's appeal, reversed the jury and remanded the action for retrial.

On March 10, 1977, Dacey appealed to the Chief Court Administrator of Connecticut, the Honorable John P. Cotter, for the assignment of the case to a judge who was not a member of the Defendant Association, citing Section 51-39 of the Connecticut General Statutes [1] which prohibits a judge from sitting on an action in which he has a personal or pecuniary interest. Judge Cotter replied that there were a number of judges who were not members of the defendant Bar Association and who therefore "would be

1. Section 51-39 of the Connecticut General provides inter alia: "When there is so near a relationship between any judge and any party in any proceeding in court before him, or when any judge may be liable to contribute to the damages, costs and expenses of any...proceeding, or when he may receive a direct pecuniary benefit by the determination thereof, he shall be disqualified to act."

in a position to try the case," - the clear implication being that a judge who was a member would not be in a position to try the case. He concluded by saying that he was referring Dacey's letter to the Chief Administrative Judge at Bridgeport "to resolve the matter." In a hearing on a preliminary motion by the Defendant Association, the Chief Administrative Judge at Bridgeport recused himself on the grounds that he was a member of the defendant Association and therefore disqualified to sit under the statute.

However, when trial of the action began on May 27, 1977 with Superior Court Judge Henry J. Naruk presiding, and he was asked at a pre-trial conference in chambers to confirm that he was not a member of the defendant Association and therefore not disqualified by the terms of Section 51-39 of the statutes, he acknowledged that, in fact, he was a member. Asked to disqualify himself, he declined to do so. When Dacey's counsel indicated that he would expect the Court to disclose to the jury the fact of his membership in the defendant Association and thus his personal and pecuniary interest in the action, Judge Naruk refused. When counsel then stated that he would feel it encumbent upon him to make such disclosure in his argument to the jury, the Court threatened to declare a mistrial.

During the trial, Judge Naruk refused to allow the admission of important evidence including a New York Court of Appeals decision utterly refuting the testimony of the defendant Association's

"expert witnesses." When Dacey discovered that a key piece of evidence had been tampered with by the defense and asked that the verdict be set aside,the Court refused.

During the first trial, Dacey's counsel had performed brilliantly. In the retrial, he held himself apart from Dacey, refusing to raise points which had played an important part in the successful first trial. Only when the jury was out did Dacey discover that during the period of preparation for the trial, his counsel had acquired a "new partner" who came directly from a partnership in the law firm which was defending the Bar Association. There can be no doubt that Dacey was the victim of a gross legal and judical impropriety. The result of the trial was a verdict for the Association.

Dacey then filed an action in the U.S. District Court, charging that he had been deprived of due process by Judge Naruk's insistence upon trying the case in the face of his disqualification, and asked that the verdict be set aside by the Federal Court as being in violation of Title 41,U.S.C. Section 1983[2]. Without

2.Title 42U.S.Code Section 1983 provides inter alia: "Every person who,under color of any statute,ordinance,regularion,custom or usage...subjects,or causes to be subjected,any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights,privileges,or immunities secured by the Constitution and laws,shall be liable to the party injured in an action at law,suit in equity or other proceeding for redress."

a hearing, a U.S. District Judge, who was also a member of the Association, dismissed the action on the ground that a judge was absolutely immune from suit, ignoring a wealth of case law which holds that federal injunctive relief may be granted from the unconstitutional judgments of a state court.

Dacey appealed the District Court decision to the Second Circuit which has assigned him two and one-half (2-1/2) minutes for argument.

* *

STATEMENT RE: DACEY V. COTTER, et al

Petitioner Dacey also appealed tc the Connecticut Supreme Court the judgment handed down by Judge Naruk. In connection with such appeal, Dacey cited Connecticut Statute 51-39 and moved that any justice of the Connecticut Supreme Court who was a member of the defendant Association recuse himself in deference to the statute. The five justices refused to reveal whether or not they were Association members and thus disqualified, but Dacey established from the Association's records that all five were members. In the event, they declined unanimously to recuse themselves.

Pursuant to McNeese v. Board of Education, 1963, 83 S. Ct. 1433, 1436-1437, 373 U.S. 667, 673-674, 10 L Ed.2d 622, in which it was held that in a civil rights case, exhaustion of state administrative remedies is not needed, state and federal remedies being not mutually exclusive,

Dacey filed this action in the U.S. District Court in Connecticut asking for the issuance of a federal injunction to prevent the members of the Connecticut Supreme Court from depriving him of due process -- that is, to a fair trial before an unbiased tribunal. The U.S. District Judge declined to get to the merits of the action, ruling only that the District Court lacked the power to intervene in a state court proceeding even when a question of constitutional rights was invcl ved. In so doing, the Court ignored Mitchum v. Foster, 407 U.S. 242, in which it was held that:

> "The very purpose of Section 1983 was to interpose the Federal Courts between the States and the people,as guardians of the peoples' federal rights -- to protect the people from unconstitutional action under color of state law, 'whether that action be executive, legislative or judicial.' Ex Parte Virginia, 100 U.S. at 346. Congress plainly authorized the Federal Courts to issue injunctions in 1983 actions by expressly authorizing a 'suit in equity' as one of the means of redress. And this Court long ago recognized that Federal injunctive relief against a state court proceeding can in some circumstances be essential to prevent great and immediate irreparable loss of a person's constitutional rights. Ex Parte Young, 239 U.S.33; Dombrowski v.Pfister, 380 U.S. 479."

There is a wealth of case law on this point. Further, since the District Court's judgment was handed down and the appeal brief was filed with the Second Circuit, two significant cases have been decided. In Adams v. Sampson, __F.Supp.__, 1979, a U.S. District Court in New Hampshire has intervened to over-rule the state court's imposition of a six-month jail sentence for criminal contempt upon six anti-nuclear demonstrators, ordering that they be set free.

In January, 1980, in Younger v. Colorado State Board of Bar Examiners, 79-M-645, U.S. District Judge Richard Matsch struck down a ruling by the Colorado Supreme Court on the grounds that it violated the 14th Amendment guarantees of due process and equal protection. Both of the decisions are at variance with that of the District Court in this action.

The United States Court of Appeals for the Second Circuit has allowed your Petitioner two and one-half (2-1/2) minutes to argue this appeal.

* * *

Your Petitioner asserts that the allotment of two and one-half minutes each for argument in these two significant civil rights matters is a gross denial of his constitutional rights to due process, and he respectfully moves for the issuance of a Writ of Mandamus requiring the Second Circuit to grant him proper

and adequate time for such argument.

Norman F. Dacey
Plaintiff/Appellant/
Petitioner
89 Grovers Avenue
Bridgeport, CT 06605
(203) 374-5226

February 13, 1980
Service certified under Rule
5 (b) F.R.C.P. under penalty
of perjury

Norman F. Dacey
89 Grovers Avenue
Bridgeport, CT 06605

Sent by First Class Mail to the following:

Clerk - U.S.Court of Appeals
for Second Circuit
Carl R. Ajello, Attorney General
Goldstein & Peck

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK 10007

Calendar No. 489
814
Docket No. 79-7657
79-7857

FIRM NOTICE

Date of Hearing: 2/29/80 Calendar Call: KXJ 10:30 AM ( ) 2:00 PM

Re: Norman F. Dacey v. Henry J. Naruk, John P. Cotter, et al.

( ) This appeal will be taken on submission.

(X) Oral argument time has been allotted as follows:
5 minutes per side.